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CHAMBERS OF
WILLIAM H. PAULEY
U.S.D.J.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ELMARIA MARTINEZ, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

FOREST LABORATORIES, INC.; and FOREST
PHARMACEUTICALS, INC.,

Defendants.

No. 10-CV-6032 (WHP)

SO ORDERED:

WILLIAM H. PAULEY III U.S.D.J.

12/9/11

STIPULATION AND ORDER STAYING CASE

WHEREAS, in this action, Plaintiff Martinez was formerly employed by Defendants Forest Pharmaceuticals, Inc., a subsidiary of Forest Laboratories, Inc., (together, "Defendants" or "Forest") as a Territory Sales Representative;

WHEREAS, Plaintiff asserts claims for overtime under the Fair Labor Standards Act (FLSA) and New York Labor Law (NYLL), and seeks to proceed as a class and collective action;

WHEREAS, a circuit split exists as to one of several core issues in the above-referenced matter, namely, whether pharmaceutical sales representatives qualify as exempt from overtime under the outside sales exemption under the FLSA;

WHEREAS, on November 28, 2011, the United States Supreme Court granted the petition for certiorari in the matter of *Christopher v. Smithkline Beecham Corp. DBA GlaxoSmithKline*, 635 F.3d 383 (9th Cir. 2011) ("GSK"), where the Ninth Circuit had concluded that pharmaceutical representatives are exempt from overtime under the outside sales exemption;

WHEREAS, one of the questions on which the Supreme Court granted certiorari is whether the FLSA's outside sales exemption applies to pharmaceutical sales representatives;

WHEREAS, the parties anticipate that the Supreme Court's resolution of the aforementioned circuit split will likely provide guidance on one of the several core issues in the case;

WHEREAS, it is anticipated that the Supreme Court's ruling in *GSK* will be issued before the end of its current term;

WHEREAS, a stay of this matter until the Supreme Court issues its decision in *GSK* will promote judicial efficiency and preserve the resources of both the judiciary and the parties, the latter of which are about to embark on voluminous and expensive discovery;

WHEREAS, there exists substantial precedent for such a stay in pharmaceutical representative overtime cases, including Your Honor's grant of a stay this year in *Raimundi v. Astellas US LLC*, No. 1:10-cv-05240, ECF Doc. 24 (S.D.N.Y. Jan. 24, 2011) and Judge Forrest's grant of a stay in the same matter just last week (on November 30, 2011, ECF Doc. 84) in light of the Supreme Court's grant of certiorari in *GSK*;

WHEREAS, other federal courts that have considered stipulations or motions to stay in pharmaceutical wage/hour class and collective actions in the 10-day period since the Supreme Court granted cert in *GSK* have consistently endorsed the stipulations or granted the motions, *See, e.g.,* Order, *Schedel v. Merck & Co.*, Civ. No. 3:07-cv-00391-PGS-TJB (D.N.J. Dec. 2, 2011), ECF Doc. 84; Stipulation and Amended Order Staying Litigation, *Astellas, supra*; *Camp v. Lupin Pharmaceuticals, Inc.*, No. 10-cv-01403-RNC (D. Conn. Dec. 5, 2011), ECF Doc. 99, and motions to stay are pending in many other pharmaceutical cases as well, and;

WHEREAS, for these reasons, Plaintiff hereby requests that the Court issue the requested stay, and Defendants have consented to the request;

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND ORDERED
THAT:

1. All proceedings and activity of any kind in this case are hereby stayed, effective immediately, until the Supreme Court issues its decision in the *GSK* case.

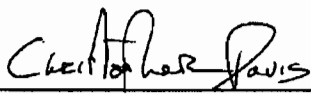
2. Within thirty (30) days of the date of the Supreme Court's disposition in *GSK*, the parties shall file a joint status report advising this Court of the status of the case and a proposal for case scheduling.

3. This agreement is without prejudice and subject to Defendants' arguments that this case should not proceed as a collective or class action.

RESPECTFULLY STIPULATED, AGREED, AND REQUESTED BY:

Dated: December 7, 2011
New York, New York

THE OTTINGER FIRM, P.C.

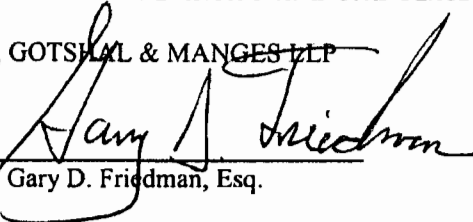
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ATTORNEYS FOR PLAINTIFF AND THE CLASS

Dated: December 7, 2011
New York, New York

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ATTORNEYS FOR DEFENDANTS

SO ORDERED:

Hon. William H. Pauley, U.S.D.J.

Dated: _____, 2011